

# PUBLIC SUBMISSION

<b>As of:</b> November 09, 2010
<b>Received:</b> November 08, 2010
<b>Status:</b> Posted
<b>Posted:</b> November 09, 2010
<b>Tracking No.</b> 80b84858
<b>Comments Due:</b> November 08, 2010
<b>Submission Type:</b> Web

**Docket:** EPA-R03-OW-2010-0736  
Draft Chesapeake Bay Total Maximum Daily Load

**Comment On:** EPA-R03-OW-2010-0736-0001  
Clean Water Act Section 303(d): Notice for the Public Review of the Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay

**Document:** EPA-R03-OW-2010-0736-0370  
Comment submitted by T. Page

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## Submitter Information

**Submitter's Representative:** Tom Page

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## General Comment

The Honorable Doug Domenech  
Secretary of Natural Resources  
Patrick Henry Building  
1111 East Broad Street  
Richmond, Virginia 23219

- I appreciate all that you and Governor McDonnell have done to oppose and slow adoption of EPA's TMDL. I agree with your criticisms of the EPA TMDL, the process and timetable EPA has used to draft the TMDL and require adoption of a state WIP, and the flaws in EPA's Chesapeake Bay model.
- When the Virginia WIP is resubmitted to EPA by the November 28, 2010 deadline, please make sure it addresses the following concerns:
  - o The pollutant allocations in the WIP for the urban/suburban and all other sectors should be returned to the levels recommended by the Secretary's Stakeholders Advisory Group (SAG). The revised WIP should restore equity to the allocations as recommended by the SAG which already require significant reductions for all sectors except Wastewater Treatment Plants (WTPs).
  - o Any additional pollutant allocations required by EPA should be assigned on the basis of the cost-effectiveness and cost-benefit in pollutant reductions achievable by available Best Management Practices (BMPs). Recommend that they consider the cost-effectiveness and cost-benefit data prepared by Mike Rolband of Wetland Studies and Solutions.
  - o The Virginia WIP submitted to EPA in September fails to take into account cost-effectiveness. Urge Virginia to use available data to take it into account in their revised WIP. The draft WIP unfairly shifts additional

burdens onto the urban/suburban, on-site septic and agriculture sectors while reducing the contribution from WTPs to virtually no increase going forward. The BMPs required by the urban suburban sector to meet this shift are documented by Mike Rolband to be more than 10 times more expensive than available WTP technologies that could be phased-in with EPA approval over the full 15 year TMDL implementation period.

- o The additional allocations required by the draft TMDL after returning to the equitable distribution recommended by the SAG should be met through WTPs. The urban/suburban sector will have to pay these WTP costs as well but at far less cost than requiring urban retrofits beyond the levels already included in the SAG WIP. The greatest burden of this requirement for additional urban retrofits will fall on VDOT and therefore the state itself.

- o The revised WIP should clarify Virginia's commitment to legislation that will prohibit the sale of fertilizer with phosphorus in Virginia except under limited circumstances including for the establishment of new lawns, when a soil test calls for it or organic fertilizer is used.

- o While we support the study and establishment of an expanded nutrient trading exchange, allocations in the revised WIP should not be based on its availability. Such changes could be incorporated into the 2011 or 2012 revised Virginia WIP if the study requested by DEQ finds a workable and cost-effective exchange and/or fund can be established. The trading program proposed in the draft WIP is not workable and as a result would require levels of costly urban/suburban retrofits for existing development that far exceed even the draconian EPA urban/suburban retrofit backstop. VACRE supports establishment of a fund through which less expensive agricultural or wastewater BMPs could be installed through payments received from urban/suburban land disturbing projects while achieving greater and more easily verified pollutant reductions than can be achieved through the more expensive urban retrofits.

- o The draft WIP as worded has the unintended consequence of requiring reductions in phosphorus that exceed the unreasonable levels required under the suspended regulations previously adopted by the Kaine Administration. The WIP should be revised to provide for a much more reasonable phosphorus standard for new development that is close to the current standard in place.

- o The 20% pollutant reduction requirement for redevelopment projects is excessive. It will encourage sprawl by unnecessarily increasing the cost of urban redevelopment projects.

- Virginia should quickly file suit against the EPA in early 2011 to block or delay implementation of the draft TMDL and the effective date of Virginia's WIP if EPA fails to delay adoption of the TMDL or fails to allow for a WIP that addresses Virginia's concerns and those outlined in your comments.